much larger in amount than the legacies to her other children. The court held the legacy was not an ademption because the debt was due by the testatrix as trustee, it was unliquidated, and it was absolute while the legacy invested them only with a defeasible fee.

The general rule is undoubtedly that a legacy to a creditor is in satisfaction of debt. The inherent unsoundness of the rule, however, has led the courts universally to emasculate the rule with exceptions and limitations.

MASTER'S DUTY TO PROVIDE MEDICAL ATTENDANCE FOR INJURED SERVANT.—In the early English cases involving the question of the master's implied duty to furnish medical attendance to a servant, there was considerable conflict before any definite rule was laid down.[1] Some of the decisions distinctly held the master liable for such attendance, where the contract of hiring said nothing of such a duty.[2] By the end of the eighteenth century it became the settled English doctrine that there is no such obligation resting on a master as an implied incident of the contract of service, or growing out of the relation of master and servant as such.[3] The American cases first dealt with the problem in the form of the master's liability for medical attention to his slave. The slave being chattel, there was little or no question of the liability in this case.[4] When the American courts came to decide the case of the ordinary servant they very generally followed the English decisions and laid down the rule that under ordinary circumstances and in the case of the ordinary servant the master is not under obligation to furnish medical attendance, when the contract is silent on the subject.[5]

But while this is the general rule, there have been exceptions made to it in some States with respect to certain classes of servants and under varying sets of circumstances.

The most generally recognized exception is that made in the case of seamen. It is an undisputed rule of maritime law that a sick or injured seaman is entitled to medical attendance at the expense of ship and ship-owner, where nothing is said of this in the contract of service.[6] The reason for this is obvious; the ordinary duties of

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[1] King *v.* Hales-Owen, 11 Mod. 278; Newby *v.* Wiltshire, 2 Esp. 739.

[2] Scarman *v.* Castell, 1 Esp. 270; Simmons *v.* Wilmott, 3 Esp. 93.

[3] Wennall *v.* Adney, 3 B. & P. 247.

[4] See Dunbar *v.* Williams (N. Y.), 10 Johns. 249; Sweetwater Mfg. Co. *v.* Glover, 29 Ga. 399.

[5] Sweetwater Mfg. Co. *v.* Glover, *supra;* Evans *v.* Collier, 79 Ga. 315, 4 S. E. 264; Davis *v.* Forbes, 171 Mass. 548, 47 L. R. A. 170; Pittsburg, C. C. & St. L. R. Co. *v.* Sullivan, 141 Ind. 83, 40 N. E. 138; Jesserich *v.* Walruff, 51 Mo. App. 270; Malone *v.* Knickerbocker Ice Co., 60 N. W. 999, 88 Wis. 542; Denver, etc., R. Co. *v.* Iles, 25 Colo. 19, 53 Pac. 222; Voorhees *v.* N. Y. C. & H. R. R. Co., 198 N. Y. 558, 92 N. E. 1105.

[6] Brown *v.* The D. S. Cage, 1 Woods 401, Fed. Cas. No. 2002; The Forest, 1 Ware 429, Fed. Cas. No. 4936; The George, 1 Sumn. 151, Fed. Cas. No. 5329; Harden *v.* Gordon, 2 Mason 541, Fed. Cas. No. 6047; The North American, 5 Ben. 486, Fed. Cas. No. 10314.

a seaman, by their very nature, isolate him from home and family. Usually the only means he has of securing medical attendance is through the master, who is the representative of the owner. The other class of employees for whom special consideration is claimed is that of railroad employees. But this exception is by no means general, and where recognized the duty arises only in cases of emergency. By statute, in at least one State, railroads are required to notify the physicians most accessible to the place of an accident in which an employee is injured.[7] In another State it is held that a railroad discharges its duty when it has conveyed an injured employee to the nearest place where medical attention is procurable and left him in charge of a physician.[8] The rule which has been consistently followed in Indiana goes a little further than this.[9] In the recent case of *Tippecanoe L. & T. Co.* v. *C. C. C. & St. L. Ry. Co.* (Ind.), 104 N. E. 866, the railroad company was held liable for failure to furnish medical attendance to an employee who had been rendered helpless in the performance of his duty, though through no negligence of the company. It was held to be the company's duty in such a case to take such steps as are reasonably necessary and proper, under the circumstances, to prevent an aggravation of the injury through exposure, or for the want of medical or surgical attendance. But, by way of caution, the court added that this duty arises only in extraordinary cases where medical or surgical treatment is imperatively required to save life, or to prevent further serious bodily injury—it arises with the emergency, and with it expires.

The courts seek to justify themselves in making an exception of railroad employees on the same ground as in the case of seamen, namely, on the ground that their duty carries them away from home. But there immediately arises the question why this doctrine should not apply to all cases of emergency. Is there no one who is under obligation to a helpless man who has been injured in the performance of his duty? It would seem that the least that could be required of the employer would be that he put the employee in a position to obtain medical treatment, as is required of railroads in some States. Justice would seem to demand that, when a servant has been rendered helpless in the performance of his duty, the master, though not liable for the injury, take such affirmative steps as are reasonably necessary and proper, under the circumstances, to prevent loss of the servant's life, for the want of medical treatment, or nursing. In dicta in several cases such a duty is said to fall upon every master in cases of great emergency, but, except as applied to railroads in a few States, the law does not yet go so far as this.[10]

Of course, any specific agreement between master and servant

[7] S. Car. Gen. Stat. Sec. 1525.

[8] B. & O. R. R. Co. *v.* State, 41 Md. 268.

[9] Terre Haute, etc., R. Co. *v.* McMurray, 98 Ind. 358.

[10] Chaplin *v.* Freeland, 7 Ind. App. 676, 34 N. E. 1007. See also Meisenback *v.* Southern Cooperage Co., 45 Mo. App. 232, holding that there is no such duty even in case of great emergency.

obviates all difficulty. It then becomes merely a matter of the performance of a contract. In all of these cases, both where there is held to be an implied duty and where there is an express agreement, it is settled that the master performs the duty by securing competent medical aid, and is not responsible for negligence or malpractice on the part of a physician hired to attend the injured party, unless his general reputation is so bad that the law imputes knowledge of it to the master.[11]

WAIVER OF NOTICE OF CLAIM REQUIRED BY SHIPPING CONTRACT.—The modern doctrine which is generally accepted is that a common carrier may by contract limit his common-law liability, except for damage or loss resulting from negligence or positive wrong-doing.[1] These contracts between carrier and shipper often take the form of an agreement upon a certain maximum amount which shall be the limit of the carrier's liability in case of loss or damage. Still more frequently there is found in bills of lading and shipping contracts a provision that written notice of any claim for the loss of, or damage to, the goods shall be given to the agent of the carrier within some specified time, such as thirty, or ninety days, and that unless such notice is given there shall be no liability on the part of the carrier. Such a stipulation is held to be valid where the conditions imposed are reasonable.[2] But they are held not to apply where the loss is due to negligence or actual misconduct. The theory upon which such contracts are made is not far to seek. This provision is a kind of statute of limitations imposed by contract. It gives the carrier an opportunity to investigate before all the evidence is destroyed and while the circumstances are fresh in the minds of those handling the shipment. On the whole, it may be said that the courts have been very liberal in their construction of what is reasonable, holding as such almost any practicable requirement fully and fairly entered into by the parties.

But a question which has vexed the courts probably even more than the validity of such contracts, or the reasonableness of specific ones, is the question of the waiver by the carrier of the performance of these stipulations as to notice of claims. The cases in which the question of a valid waiver arises easily divide themselves into two classes: (1) those where, within the specified time, the carrier

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[11] Atlantic C. L. R. R. Co. *v.* Whitney, 62 Fla. 124, 56 South. 937; Guy *v.* Lanark Fuel Co. (W. Va.), 79 S. E. 941; Wells *v.* Ferrybaker Lumber Co., 57 Wash. 658, 107 Pac. 869; Simon *v.* Hamilton Logging Co., 76 Wash. 370, 136 Pac. 361.

[1] See Murphy *v.* Wells-Fargo & Co., 99 Minn. 230, 108 N. W. 1070, and cases collected there.

[2] Southern Exp. Co. *v.* Caldwell, 21 Wall. 264, 22 Law Ed. 556; St. L. & S. F. R. Co. *v.* Phillips, 17 Okla. 264, 187 Pac. 470; U. S. Exp. Co. *v.* Harris, 51 Ind. 127. What is a reasonable time is a question of law for the court. Browning *v.* Railroad Co., 2 Daly (N. Y.) 117.